

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 391 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GULAMMOHAMMED ABDULMAJEED ANSARI

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 4
MR AI SURTI for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision: 18/07/2000

CAV JUDGEMENT (Per D.M.Dharamadhikari, CJ)

This is a Public Interest Litigation brought before this Court by the petitioner who describes himself as President of Taraqqi Urdu Laghumati Education Trust. Directions have been sought in public interest to the authorities of the State of Gujarat and the Collector, Ahmedabad city to mobilise the Government Machinery or Police Force to remove the encroachers from the Chartoda Kabristan in Sheharkotda Jurisdiction (Gomtipur) within the city limits of Ahmedabad.

2. In the petition it has been stated that several hundreds Muslims have illegally/forcibly encroached in the land of the graveyard. They are not only living there with their structures and hutments but also engaged in several illegal activities. It is submitted that the encroachment on the land in the grave yard is everyday increasing and a day might reach when place for burial of dead Muslim will fall short in the graveyard. It is submitted that infact Ahmedabad Sunni Waqf Community (represented by its present respondent no.3) is expected to take necessary action for removal of the encroachments. It is because of their apathy and inaction that the Muslims in general, who find it difficult to carry the dead to the graveyard for burial, have approached this Court for taking remedial measures.

3. On notice being issued on this Public Interest Litigation to the respondents, the respondent no.3, who is the President of Sunni Muslim Waqf Community has filed a reply affidavit. In the said reply it has been stated that in order to accommodate the alleged encroachers living within the Kabristan area, the Trust Committee has acquired an alternative site of about 7967 sq.yards at Narol, Taluka Dascroi at Village Vatva popularly known as Kutbe Alamnagar. On behalf of the Waqf Committee, it is informed that about 85 families have shifted to the alternative site provided by the Trust. About 100 other families have filed individual suits in the Small Causes Court at Ahmedabad and injunctions have been granted but in about 50 suits injunction has been vacated/not granted.

4. One person representing the unorganised alleged encroachers living in the graveyard i.e. Abdul Aziz Zamirali Ansari has filed an affidavit in reply opposing the petition. In the reply it has been submitted that the Kabristan land is a private trust land, it being a property of the Waqf the appropriate proceedings could be taken under Section 54 of the Waqf Act. On behalf of the alleged encroachers, it is stated that many of them are living by constructing super structures with licence or

permission granted by the Waqf Trust. It is submitted that large number of rent suits have been filed in the Civil Court against the apprehended action of removal by the Trust and injunctions have been granted. It is submitted that the suits are awaiting full trial. On behalf of some of the dwellers of Hatikhai area of the trust land, it is submitted that they are tenants and not encroachers as they are regularly paying rent to the Trust. It is submitted that the Trust is desirous of raising a multistoreyed shopping complex on Hatikhai area and therefore being a party to the Civil Suits, the Trust was unable to initiate any other proceedings. They have indirectly brought this Public Interest Litigation to frustrate the injunction order passed against the Trust in the civil suits. It is further submitted that the entire land adjoining the actual Kabristan has not been notified as Kabristan and no public or civil bodies have any authority or jurisdiction to remove the dwellers from the alleged objectionable area.

5. After hearing the Learned Counsel for the petitioner and the respondents on 5.4.2000, we passed the following order:-

"We re-list this matter on 27th April 2000 at the request of learned counsel appearing for all the parties on a promise that they would sit together and find out a solution for shifting of the families living near and inside the graveyard to some unobjectionable place to be earmarked by the Waqf".

5.A. We are told that rounds of discussions and consultations were made between the parties through their Counsel but no solution could be found.

5.B. On 27.4.2000 by the following order, we insisted the parties to make a joint inspection of the alternative place for shifting and make report to this Court. The order dated 27.4.2000 reads as under:-

"Let the counsel appearing in this case go on a joint visit for spot inspection of the land on which the slum dwellers are presently residing and the place that is suggested to them for shifting. After completion of the spot inspection, let a report be submitted before 2.5.2000. The date of spot inspection would be 5.00 'o' clock today, i.e. 27.4.2000. Put up on 2.5.2000."

After the above quoted order the case was listed for hearing and we are disappointed to note that the joint deliberation and discussions between the parties and their Counsel brought forth no solution. The Learned Counsel appearing for the petitioner, for the trust and for the alleged encroachers were therefore heard on the merits of the case.

6. We have no doubt that unsystematic use of Kabristan land must be creating difficulties to the muslims carrying dead to the Kabristan. It is a cause of all round public inconvenience to the muslims of all sects. From the reply affidavit filed, it appears that encroachments are in the graveyard proper and outside the graveyard in its vicinity. From the replies filed by the parties, it appears that the alleged encroachers are claiming & asserting their civil rights in Civil Courts. In some cases injunction orders have also been passed and in some it might have been vacated but the Civil Suits are pending. The Trust has tried to solve the problem of encroachment to some extent by suggesting an alternative site to the encroachers. Some families have migrated but others still living there have expressed that the alternative site suggested is unsuitable and would be far away from their place of work. Some of the alleged encroachers claim to be tenants and some licensees of the trust. There are different types of occupants claiming different kinds of rights. It would not be possible in a Public Interest Litigation to adjudicate upon the rights of various kinds of alleged encroachers who are not effectively represented before us. In these circumstances, it would not, at this stage, be possible to direct the State and the Municipal Authorities to take any action for removal of the alleged encroachers. The dimension of the problem is such that a concerted effort is required by the authorities of the State, the Collector of Ahmedabad city and the members of the Ahmedabad Sunni Waqf Committee. In the situation that is obtaining before us, it is not possible to issue directions against the respondents as have been claimed in this Public Interest Litigation. We therefore dispose of this petition with directions to respondents before us to identify the alleged encroachers on the land of the graveyard or in the vicinity of the graveyard and take remedial action against them as permissible under Law. In the circumstances, the petition is disposed of with no order as to costs.

(D.M.Dharamadhikari, CJ)

(B.C.Patel, J)

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